

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
DOCKET NO. 3:07-cv-00339-W**

**CLEAR BLUE, INCORPORATED, a
North Carolina corporation,**

Plaintiff,

vs.

**CLEAR!BLUE, INC., a Michigan limited
liability company (sued as "CLEAR!BLUE,
INC., a Michigan corporation"),**

Defendant.

**NOTICE OF HEARING
and
TRIAL DATE**

TAKE NOTICE that a hearing on the parties' cross-motions for summary judgment (Docs. Nos. 35, 37) will take place before the undersigned United States District Judge, to be held at **3:00 p.m. on Friday, August 8, 2008**, in Courtroom #1 of the Charles R. Jonas Federal Building in Charlotte, North Carolina. Oral arguments will be limited to fifteen (15) minutes per party.

Additionally, this matter **shall be set for trial on the Court's September 8, 2008**, mixed term. A final pretrial conference will be set for the week of August 25, 2008, at a date and time to be noticed by the Court. The following pretrial submissions shall be jointly drafted and submitted to Chambers at least seven (7) calendar days prior to the final pretrial conference:

i. Proposed Pretrial Order. This document shall contain:

- (1) A joint statement of the case, the purpose of which is to acquaint the jury with the nature of the case. Unless the case is extremely complex, this statement should not ordinarily exceed one page.
- (2) Stipulations as to all issues of law or fact to which the parties can

agree for purposes of streamlining trial. If a party fails to stipulate to a fact (*e.g.*, the authenticity of a document) without articulating a good faith basis for disputing it, the Court shall assess against that party the opposing party's costs (including the cost of subpoena service, witness travel costs and fees, and reasonable attorney's fees) incurred in proving the fact at trial. See Fed. R. Civ. P. 37(c)(2).

- (3) A brief synopsis (no argument) of the legal or factual contentions about which the parties have been unable to stipulate. Any advocacy should be reserved for a trial brief which may be submitted as provided in Paragraph 4(d) below.
- (4) A list of exhibits that each party may offer at trial (except those offered solely for impeachment or cross-examination), numbered sequentially; a brief description of the exhibit; any stipulations as to authenticity or admissibility; and the basis for any objections. This information shall be entered into a table in substantially the following format (the last two columns should be left blank to be completed by the courtroom clerk at trial):

Exh. No.	Description	Stipulation – Authenticity	Stipulation – Admissibility	Objections	Identified By	Admitted
1	Police Report	Yes	No	Hearsay		
2	Draft of Contract	No	No	Foundation, Relevance, Parol Evidence		

- (5) Designations by volume, page and line of all portions of pleadings

and discovery materials, including depositions, interrogatories, and requests for admission, that each party may offer at trial (except those offered solely for impeachment or cross-examination); cross-designations; a brief description of the substance of the designation; and the basis for any objections. This information should be entered into a similar table format as the exhibit list.

(6) A list of the names and addresses of all witnesses each party may offer at trial, together with a brief statement of what counsel proposes to establish by their testimony.

(7) A statement of the qualifications of any expert witness a party may offer at trial, unless the parties have stipulated to the qualifications of the expert witness as provided above.

ii. Proposed Voir Dire. The general procedures governing voir dire is set forth in the Court's Standing Order Governing Jury Selection and Instruction in Civil Cases Before the Honorable Frank D. Whitney, Miscellaneous No. 3:07-MC-47 (Doc. No. 5). In addition to the Court's standard voir dire, counsel may prepare and jointly submit a single compilation of voir dire questions sought to be asked, also noting the agreement or objection of other parties to each proposed question. Pursuant to Rule 47(a), the Court will ask prospective jurors only such of the proposed voir dire as it deems proper.

iii. Proposed Jury Instructions. The general procedures governing jury

instruction is set forth in the Court's Standing Order Governing Jury Selection and Instruction in Civil Cases Before the Honorable Frank D. Whitney, Miscellaneous No. 3:07-MC-47 (Doc. No. 5). Any objections to, or requests for modification or supplementation of, the Court's pattern jury instructions must be made at this time or may be deemed waived. In addition to the Court's generally-applicable pattern jury instructions, counsel should prepare and jointly submit a single compilation of proposed jury instructions that are narrowly tailored to the anticipated issues arising at trial (*e.g.*, the elements of the claims and defenses at issue), subject to supplementation at the close of evidence, as necessary, as contemplated by Rule 51. Counsel shall identify and index each proposed instruction by number and heading, and support each proposed instruction with adequate legal authority. Where there is disagreement as to any instruction, this jointly prepared submission shall disclose the basis for a party's objection and (if applicable) provide a proposed alternate instruction.

- iv. Exhibit Notebooks. Copies of all proffered documentary exhibits (including designated portions of discovery materials), properly bound, indexed, and tabbed.¹ In addition, if counsel proposes to publish exhibits electronically through the multimedia technology available in the

¹ The Court requests three complete exhibit notebooks – one for the Judge, one for the Clerk, and one for the Witness stand.

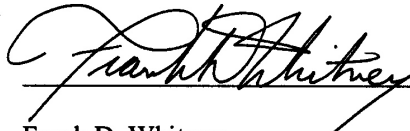
courtroom, counsel shall submit to Chambers a CD-ROM containing the pertinent files (in JPEG or PDF format for documents and images and MPEG format for audio/video), named according to the corresponding exhibit number assigned to the exhibit in the proposed pretrial order.

These exhibit notebooks and CD-ROMs are to be courtesy copies for the Court's personal use at trial. Counsel should be aware that each party will bear sole responsibility for maintaining the actual exhibits offered by that party and admitted at trial.

All working drafts of documents (*e.g.*, the proposed pretrial order, voir dire, jury instructions) shall be submitted to Chambers electronically, in either WordPerfect (WPD) or Rich Text (RTF) format, utilizing the CyberClerk feature of CM/ECF. Submissions required to be made in a tangible medium (*e.g.*, hard copies of papers and exhibits) must be sent so as ensure their receipt in Chambers by the deadlines set forth herein.

IT IS SO ORDERED.

Signed: June 5, 2008



Frank D. Whitney
United States District Judge

